THE FOURTEENTH AMENDMENT AND THE RACE QUESTION.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

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SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The past decade has witnessed a remarkable extension of the first section of the Fourteenth Amendment, in comparison with the original view which regarded it as prohibiting only discrimination because of race or color, and an even more remarkable neglect of the second section. The first section, intended mainly, if not wholly, for the benefit of the negroes, having been applied by analogy to the Chinese also, its protection was extended in the course of time to railroad and turnpike corporations, and finally to persons neither colored nor artificial. It is now pertinent to inquire: How far has it secured the end for which it was primarily intended? How far has it secured to the negroes the equal protection of the laws?

It is a small matter, comparatively speaking, that Congress was unable to guarantee the negroes equal treatment in hotels

and theaters; while the unwillingness of the southern whites to be served by civil servants of the colored race might reasonably be expected to disappear in time, along with the idea that public offices exist for the benefit of the office-holders, especially if a better-educated and more efficient class of negroes should arise in the meantime. The system of leasing convicts has sometimes caused sentences of long, involuntary servitude to be imposed, not so much as a punishment for crime whereof the parties had been duly convicted as for the purpose of supplying the demand for able-bodied convicts; but that wrong is already disappearing, together with the vicious penal system which occasioned it. But aside from the chain-gang and the public service, other opportunities for employment are open to the colored people of the South to an extent which Mr. Booker T. Washington regards as fairly satisfactory; while the Philadelphia researches of Dr. DuBois have shown that the North has, at any rate, little cause to criticise the South in that respect.

The denial of the right to vote, whether by brute force, by fraud, or under the forms of law, whether by armed mobs or by constitutional conventions, is a more serious matter. The Supreme Court has upheld the provisions of the new Mississippi constitution and statute requiring voters to be able to read any section of the state constitution, or understand or interpret the same when read, because they do not on their face discriminate between the races, and it was not proved in the argument that their actual administration was evil, but only that evil was possible under them.[1] Of course, it by no means follows from this decision that the revolutionary section of the new Louisiana constitution, practically disfranchising only illiterate ex-slaves and descendants of slaves, will stand the same test. This provision not only denies the right to vote on account of race, color, and previous condition of servitude, in direct conflict with the Fifteenth Amendment, but it also makes the right of suffrage hereditary, in opposition to the basic principles of republican government. Even in Mississippi and other states adopting similar expedients, if the discrimination against the negroes in

[1] Williams *vs.* Mississippi, 170 U. S. 213.

the actual administration of the law should be too marked, the federal courts might put a stop to it, as they did to the persecution of the Chinamen in San Francisco.[1] The Supreme Court has upheld the language of the Mississippi law, but not its actual working.

At all events, the second section of the Fourteenth Amendment, reducing the representation in Congress of states which abridge the suffrage, should be strictly enforced. This provision was intended especially to prevent the disfranchisement of the negro, and, as if with prophetic foresight, it was expressed in such general terms that it unquestionably applies even to disfranchisement through educational tests; yet its language is so mathematically explicit that it requires no interpretation, but requires simply to be enforced. A writer in the *North American Review* recently proposed, as the one straight road out of the existing difficulty, a constitutional amendment basing both suffrage and representation upon literacy, and added: "If the South, however, will not consent to a scheme so fair, then the Fourteenth Amendment to the federal constitution should be rigidly enforced." But why not enforce the constitution as it now stands, even before trying to amend it further?

There is still another form of discrimination against the negroes which is more fundamental, more insidious, more dangerous, more lasting in its effects, than even the denial of the suffrage. In too many of the southern states negro children are virtually denied the same education as white children, by laws requiring the school taxes paid by whites to go to the support of white schools, and leaving the colored schools only those paid by negroes. Where the blacks make up nearly or quite half the total population, and own but a small fraction of the wealth, the result can be nothing but inferior schools; and, as a matter of fact, the colored schools have even shorter terms than the white schools, with underpaid and overworked teachers. Dr. Spahr's investigations have shown this to be .the case in more than one of the southern states,[2] and his conclusions are

[1] Yick Wa *vs.* Hopkins, 118 U. S. 356.

[2] *The Outlook*, 58 : 510 (February 26, 1898), and 62 : 496 (July 1, 1899).

abundantly confirmed by official statistics, both state and national. For example, in Alabama the colored schools have three-fifths as many pupils as the white schools, but less than one-half as many teachers; yet the colored teachers, though deemed capable of managing even larger schools than the whites, receive much smaller salaries—averaging in 1894–5 only $18.71 a month, while the average monthly pay of white teachers was $24.03.[1] If the smaller compensation stands for a lower grade of ability, the colored children are discriminated against in the quality as well as in the amount of their schooling. Of eight southern states reporting the length of the school year for both races, ix have longer terms in the colored than in the white schools.[2]

Nothing could express more clearly than these educational discriminations the desire of those southern whites who would prevent the negroes from rising; nothing could more effectively nullify the spirit, if not the letter, of the Fourteenth Amendment. Nothing, because if the negroes had been denied education altogether by the southern states, instead of being permitted as much as they could pay for, other provision would have been made for them: Senator Blair's bill for national aid to education would have passed, and more aid would have been given by northern philanthropists. Perhaps the nation should have made some special provision for the education of the negroes when they were first elevated from slavery to citizenship, as it does for that of the Indians before they are recognized as citizens; we can see now only too clearly that it was a mistake to make citizens and voters of the slaves without at the same time doing something to guarantee them the education which alone could make their enfranchisement a safe experiment. But to educate the children of nearly five million negroes would have been even a greater task than to civilize the children of the aborigines; it was, perhaps, a task too great for either the nation or the states alone.

Evidently something must be done either to prevent or to neutralize the discriminations of the state educational systems.

[1] *Alabama's Resources and Future Prospects* (1897), p. 27.

[2] *Report of the Commissioner of Education*, 1891–2, p. 863.

If discrimination in educational facilities be a violation of the Fourteenth Amendment in letter as well as in spirit, Congress has power to order it stopped. In the famous civil-rights cases the Supreme Court decided that the act of 1875 guaranteeing equal treatment in inns, public conveyances, and places of amusement was beyond the power of Congress to enact; not, however, on the ground that these social privileges lay outside the scope of the Fourteenth Amendment, but simply because its prohibition was against state action only, and not against the offenses of individuals and private corporations. The court decided that the discriminations in question were not incidents of slavery forbidden by the Thirteenth Amendment, but did not by any means deny that the right of equal accommodation was a civil right protected by the Fourteenth Amendment against state encroachment. The right to equal education is much more clearly a civil right, and where the suffrage depends upon educational tests it is a political right also; its denial abridges a privilege of citizens of the United States, and the offender is the state itself. If, therefore, Congress should pass an act forbidding the states to discriminate between the races in education, and requiring schools for colored children to be in every respect as good as those for whites, it would be only enforcing the provisions of the Fourteenth Amendment by appropriate legislation, as specifically authorized by the amendment itself. But even with such a law on the statute-book, it would be almost impossible to prevent discrimination, which seems to be almost an inevitable result of the system of separate schools. Even in the District of Columbia, where, if anywhere, the two races should stand upon an equal footing, the teachers of colored children have larger classes and smaller salaries than the teachers of white children; yet the colored children excel the white in punctuality and regularity of attendance, and deserve at least equal advantages. If they have them not at the capital of the nation, how can they be expected to have them in the South?

If discrimination cannot be altogether prevented, the national government should make an effort to counterbalance its effects by supplementing the educational work carried on by the states.

Congress has been generous with grants of land and money in aid of education, but the negroes in the South have profited but little from its bounty. The southern public-land states were admitted into the union, and came into possession of their common-school and university lands, while the negroes were still in slavery, and before much thought had been given to their education; so that the Fourteenth Amendment or other subsequent enactments must be relied upon to secure as far as possible the equal treatment which might otherwise have been made a condition of the grants. The land grant for agricultural and mechanical colleges also antedated the emancipation proclamation, though by only a few weeks; if the bill had gone over till the following session of Congress, some provision would surely have been made for the industrial education of the negroes. In the absence of any specific provision of that kind, only four of the southern states use any part of the land-grant funds to endow institutions for the colored race,[1] although there are at least fifteen states in which the blacks are debarred from the colleges established for white students. In the case of the supplementary appropriations under the act of 1890, however, special provision is made for "a just and equitable division of the fund" wherever separate institutions are deemed necessary; so that these annual appropriations are for the most part equitably apportioned on the basis of numbers, though in one case Congress sanctioned an equal division where the colored population exceeded the white by nearly 50 per cent.[2] But the colleges for white students, besides retaining their original endowments, have the further advantage of connection with the southern experiment stations.

Thus it is evident that the cause of negro education, instead of receiving the special government aid which might reasonably have been expected under the circumstances, has never received even its proportional share of the congressional grants for education in general. To be sure, the Freedmen's Bureau assisted private philanthropy in what was done toward the education of

[1] *Report of the Commissioner of Education*, 1886–7, p. 706; 1896–7, pp. 1770.

[2] *U. S. Statutes at Large*, 27 : 271.

the blacks immediately after the war, but it was too short-lived and too much occupied with pressing material needs to make a very deep impression upon the future of the race, or even to counterbalance subsequent discriminations.

It is now too late for the government to establish schools for the negroes alone, for they are no longer the special wards of the nation, but full-fledged citizens; but it may very well provide for schools which shall be open to all without distinction of color, and in such schools the students would be chiefly of the darker race. Let the government establish at least one such school, in the District of Columbia—a training school for teachers of every race, whether they intend to teach negroes or Indians or Filipinos, in the South or in Alaska, in Puerto Rico or in Hawaii. Under the direct supervision of the Bureau of Education, such a school would maintain a high standard of excellence; and it would help to solve the problems arising from expansion, as well as those growing out of emancipation, for to it the most promising young colored men and women of the South and the brightest natives of our new possessions would resort for pedagogical training, and then return to teach among their own peoples. A beginning in this direction has already been made in the normal department of Howard University, which receives direct aid from the national treasury and makes no distinction of color. This might be made the nucleus of a great school of pedagogy which might fitly form part of a national university. Who can foretell the extent of the transformation which may be wrought in the negro race by education? Certainly it is too early for discouragement concerning the future of that race, for serious and judicious attempts at education have only just begun; and the first results are far from discouraging.

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